

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA - NORTHERN DIVISION

BETTY ANN BURKS, et al., :
Plaintiffs, :
v. : No. 2:06-CV-1081-MEF
EQUITY GROUP EUFAULA :
DIVISION LLC, :
Defendant. :
:

MOTION FOR SUMMARY JUDGEMENT

Defendant, Equity Group-Eufaula Division LLC ("Equity"), by its counsel, comes and files this Motion for Summary Judgment for the following reasons:

1. Summary judgment is appropriate under Section 3(o) of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 203(o), as evidenced by the collective bargaining agreements between Equity (or the Company predating Equity) and the union representing its employees, and the existing custom and practice.

a. The Eleventh Circuit, applying Section 3(o), has approved substantially similar line time arrangements in the poultry industry.

b. The Department of Labor has concluded that Section 3(o) requires approval of similar collective bargaining relationships.

2. Even in the absence of the bar of Section 3(o), plaintiffs' claims are precluded by the provisions of the Portal-to-Portal Act.

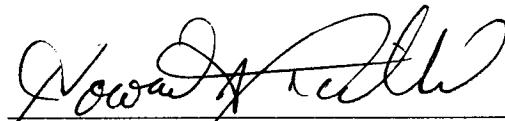
3. Equity is entitled to summary judgment for all claimed activities which do not take place at the facility such as "clearing security" or obtaining and maintaining tools such as knives and scissors or related clothing and mesh gloves.

4. Equity is entitled to summary judgment on plaintiffs' claims for "clearing security" (even if it was required) and walking time since such activities are not "integral and indispensable" to any principal work activity.

5. Equity is entitled to summary judgment on plaintiffs' claims for donning, doffing, washing and related activities since such activities are preliminary and postliminary under the Portal-to-Portal Act and do not constitute work under the FLSA.

6. Assuming, arguendo, that plaintiffs' donning, doffing, washing and related activities are not excluded by Section 3(o), nor are they preliminary or postliminary, such activities are de minimis as a matter of law.

WHEREFORE, for these reasons, and for the reasons set forth in the supporting Memorandum of Law which is being filed contemporaneously and is incorporated by reference, defendant requests that summary judgment be entered in its favor and against plaintiffs.



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CERTIFICATE OF SERVICE

The undersigned counsel for Equity Group Eufaula Division LLC certifies that true and correct copies of the Motion for Summary Judgment, supporting Appendix and proposed Order were filed and served electronically with the Clerk of Court and also were served by depositing true and correct copies in the United States Mail, first class postage prepaid, on May 30, 2008, and addressed as follows:

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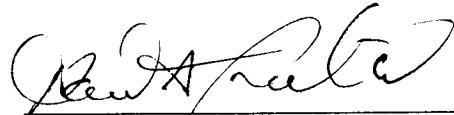
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O R D E R

AND NOW, this _____ day of _____, 2008, upon
consideration of Defendant's Motion for Summary Judgment, and
supporting Memorandum of Law, as well as plaintiffs' Response, it
is ORDERED and DECREED that the Motion for Summary Judgment is
granted and this action is dismissed with prejudice.

BY THE COURT:

Honorable Mark E. Fuller, Chief Judge